

CHAPTER 100.

TANK VESSEL FINANCIAL RESPONSIBILITY REQUIREMENTS AND ADMINISTRATIVE FEES FOR APPROVAL.

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9 VAC 25-100-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. For the purpose of this chapter only, this definition does not include nonpetroleum hydrocarbon-based animal and vegetable oils, or petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9601) and which is subject to the provisions of that act.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means any firm, corporation, association or

partnership, one or more individuals, or any governmental unit or agency thereof.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Tank vessel" means any vessel used in the transportation of oil in bulk as cargo. For the purpose of this chapter, this definition includes tankers, tank ships, tank barges and combination carriers when carrying oil. It does not include vessels carrying oil in drums, barrels, on deck portable tanks or other packages or vessels carrying oil as fuel or stores for that vessel.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

9 VAC 25-100-20. Applicability.

Evidence of financial responsibility requirements apply to all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000 gallons of oil.

9 VAC 25-100-30. Compliance dates.

This regulation shall be effective 30 days after publication in the Virginia Register. Cash or its equivalent shall be deposited with the board as required by §62.1-44.34:16 of the Code of Virginia and 9 VAC 25-100-50 A no later than 90 days after the effective date of this regulation. Operators seeking exemption from the cash deposit requirement shall submit their application and the evidence of financial responsibility no later than 60 days after the effective date of this regulation.

9 VAC 25-100-40. Statement of purpose.

The purpose of this chapter is to establish requirements for financial responsibility on the part of operators of tank vessels transporting or transferring oil as cargo upon state waters. This

regulation provides acceptable means of demonstrating the required level of financial responsibility, therefore providing the Commonwealth with the necessary assurance that an operator of a tank vessel has the necessary financial stability to conduct a proper response to a discharge of oil.

9 VAC 25-100-50. Financial responsibility.

A. The operator of any tank vessel entering upon state waters shall deposit with the board cash or its equivalent in the amount of \$500 per gross ton of such vessel. If the operator owns or operates more than one tank vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the vessel having the greatest maximum liability.

1. All documents submitted shall be in English and all monetary terms shall be in U.S. currency.

2. A copy of the board's acceptance of the required evidence of financial responsibility shall be kept on the tank vessel and readily available for inspection.

B. If the board determines that oil has been discharged in violation of applicable state law or there is a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under such law.

C. Federal government entities whose debts and liabilities are debts and liabilities of the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. Operators of tank vessels may obtain exemption from the cash deposit requirement if evidence of financial responsibility is provided in an amount equal to the cash deposit required for such tank vessel pursuant to §62.1-44.34:16 of the Code of Virginia and 9 VAC 25-100-50 A. The following means of providing such evidence, or any combination of them, will be acceptable:

1. Self-insurance. Any operator demonstrating financial responsibility by self-insurance shall provide evidence of such self-insurance in a manner that is satisfactory to the board. An operator demonstrating self-insurance shall:

a. Maintain, in the United States, working capital and net worth each in the amount required by §62.1-44.34:16 of the Code of Virginia and 9 VAC 25-100-50 A. For the purpose of this chapter, "working capital" means the amount of current assets located in the United States, less all current liabilities; and "net worth" means the amount of all assets located in the United States, less all liabilities.

(1) Maintenance of the required working capital and net worth shall be demonstrated by submitting with the application form an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus, certified by an independent certified public accountant. Those financial statements shall be for the operator's last fiscal year preceding the date of application and shall be accompanied by an additional statement from the operator's treasurer (or equivalent official), certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States and are acceptable for purposes of this chapter.

(2) If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement by the involved certified public accountant, certifying to the amount by which the operator's assets, located in the United States and acceptable under this part, exceed total liabilities and that current assets, located in the United States and acceptable under this part, exceed its current liabilities.

(3) When the operator's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the operator's treasurer (or equivalent official) covering the first six months of the operator's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have, during the first six months, fallen below the required amounts.

(4) Additional financial information shall be submitted upon request by the board, or

b. Provide evidence in the form of a marine insurance broker's certificate of insurance, certificate of entry, or other proof satisfactory to the board, that the operator has obtained oil pollution liability coverage through an operator's membership in a Protection & Indemnity (P&I) Club that is a member of the international group of P&I clubs, or through coverage provided by a pool of marine underwriters in an amount sufficient to meet the requirements of §62.1-44.34:16 of the Code of Virginia and 9 VAC 25-100-50 A.

2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be sufficient to cover the amount required by §62.1-44.34:16 of the Code of Virginia and 9 VAC 25-100-50 A. The operator shall provide evidence of such coverage in the form of a marine insurance broker's certificate of insurance or by utilizing a form worded identically to the insurance form found in APPENDIX II. The insurer must comply with all requirements in APPENDIX II.

3. Surety. Any operator demonstrating financial responsibility through a surety bond shall file a surety bond utilizing a form worded identically to the surety form found in APPENDIX III. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and must possess an underwriting limitation at least equal to the amount required by §62.1-44.34:16 of the Code of Virginia and 9 VAC 25-100-50 A. The surety must also comply with all requirements in APPENDIX III.

4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall submit the guaranty worded identically to the form found in APPENDIX IV. The guarantor shall comply with all provisions of 9 VAC 25-100-50 D 1 for self-insurance and also comply with all requirements in APPENDIX IV.

E. To obtain exemption from the cash deposit requirements:

1. The operator shall appoint an agent for service of process in the Commonwealth;

2. The insurer, guarantor, or surety shall appoint an agent for service of process in the Commonwealth;

3. Any insurer must be authorized by the Commonwealth of Virginia to engage in the insurance business; and

4. Any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation by the operator of Article 11 of Chapter 3.1 (§62.1-44.34:14 et seq.) of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

5. All forms of evidence of financial responsibility shall be accompanied by an endorsement that certifies that the insurance policy, evidence of self-insurance, surety or guaranty provides liability coverage for the tank vessels in the amount required by §62.1-44.34:16 of the Code of Virginia and 9 VAC 25-100-50 A.

6. Subdivisions E 2, E 3, and E 4 of this section do not apply to operators providing evidence of financial responsibility in accordance with 9 VAC 25-100-50 D 1.

F. Any operator whose financial responsibility is accepted under this regulation shall notify the board at least 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

G. Acceptance of evidence of financial responsibility shall expire:

1. One year from the date that the board exempts an operator from the cash deposit requirement based on acceptance of evidence of self-insurance;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

H. All nonexempt tank vessel operators shall file with the board the application form found in APPENDIX I for approval of the evidence of financial responsibility. This form shall be submitted with the required evidence of financial responsibility (cash deposit, proof of insurance, self-insurance, guaranty or surety) and shall be completed insofar as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form. All forms must be acknowledged before a Notary Public. If the operator is a corporation, the form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the form must be signed by a general partner or the sole proprietor.

I. Application for renewal of acceptance of proof of financial responsibility shall be filed with the board 30 days prior to the date of expiration.

J. All applications, notifications of changes, submissions applications, notifications of changes, submissions and updates

required by this regulation shall be directed to the Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

K. The board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation;
or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility.

L. If evidence of financial responsibility provided to the federal government or any other state meets the requirements of this chapter, the board may, upon review, accept it in full or partial satisfaction of the requirements of this regulation as appropriate. A certified copy of the document accepting the evidence of financial responsibility and a copy of the financial responsibility mechanism shall be provided to the board for approval.

9 VAC 25-100-60. Administrative fees.

A. This section establishes application fees for acceptance of evidence of financial responsibility.

B. An application for approval of evidence of financial responsibility will be accepted only when the fees established by this section have been paid.

C. Fees shall be paid by check, draft or postal money order made payable to the Virginia State Water Control Board and must be in U.S. currency.

1. Application fees for approval of evidence of financial responsibility for tank vessels are as follows:

a. Applicants shall pay an application fee of \$120.

b. Applicants shall pay a fee of \$30 for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility.

D. Application fees are refundable upon receipt of a written request received by the board no later than 30 days after submittal and prior to approval.

E. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicants' future use under this section.

9 VAC 25-100-70. Delegation of authority.

The director of the Department of Environmental Quality, or his designee, may perform any act of the board under this chapter, except as limited by §62.1-44.14 of the Code of Virginia.